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8	BEFORE THE
0	BOARD OF REGISTERED NURSING
9	DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
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	In the Matter of the Accusation Against: Case No. 2011 - 265
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13	ANNETTE P. FORGIONE-MARTIN ACCUSATION P.O. Box 901
13	Benicia, CA 94510
14	Registered Nurse License No. 462797
15	Respondent.
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17	Complainant alleges:
18	<u>PARTIES</u>
19	1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20	official capacity as the Interim Executive Officer of the Board of Registered Nursing, Departmen
20	Official capacity as the interim Executive Officer of the Board of Registered Pursing, Department
21	of Consumer Affairs.
22	2. On or about March 31, 1992, the Board of Registered Nursing issued Registered
23	Nurse License Number RN 462797 to Annette P. Forgione-Martin ("Respondent"). The
24	Registered Nurse License was in full force and effect at all times relevant to the charges brought
25	herein and will expire on November 30, 2011, unless renewed.
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28	III

Accusation

JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
- 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.
- 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

RELEVANT STATUES AND REGULATIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- "(a) Unprofessional conduct, which includes, but is not limited to, the following:
- "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.
- "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.
 - 7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single

situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

9. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.
- "(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

10. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052...

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STATEMENT OF FACTS

- 17. From 2004 up to December 2007, Respondent was employed as a registered nurse at Doctors Hospital Medical Center in San Pablo, California.
- 18. Respondent admitted during interviews with Jeff Novitzky, Special Agent, U.S. Food and Drug Administration, conducted on May 21, 2009 and July 14, 2009, that while employed at Doctors Hospital she carried home and kept vials of Morphine Sulfate, Demerol, Versed and Phenergan. Respondent further admitted during these interviews with Special Agent Novitzky, that she transported these medications to her residence in the state of Florida.
- 19. Respondent admitted during a May 21, 2009, interview with Special Agent Novitzky that in 2006 or 2007, she injected her minor aged son at home with the medication Phenergan. Said medication was administered without a prescription and without an order by a physician.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Wrongful Possession of Controlled Substances and/or Dangerous Drugs)

20. Respondent's license is subject to discipline for incompetence under Code section 2761, subdivision (a)(1) and section 2762, subdivision (a), in that she wrongfully possessed controlled substances (Morphine Sulfate, Demerol and Versed) and a dangerous drug (Phenergan) as set forth above in paragraphs 17 thorough 19.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence – Administering a Dangerous Drug Without Physician Order)

21. Respondent's license is subject to discipline for gross negligence pursuant to Code section 2761, subdivision (a)(1) and section 2762, subdivisions (a) and (b), in that she administered a dangerous drug (Phenergan) to her minor aged son that could have jeopardized his health and/or life and that was given without a physician's order as set forth above in paragraph 19.

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<u>PRAYER</u>

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- Revoking or suspending Registered Nurse License Number 462797, issued to Annette P. Forgione-Martin.
- 2. Ordering Annette P. Forgione-Martin to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3.
 - Taking such other and further action as deemed necessary and proper. 3.

DATED:

Interim Executive Officer Board of Registered Nursing Department of Consumer Affairs State of California

Complainant

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